

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, November 1, 2002

Division One

A093831 -- The People v. Gilbert Layson.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A094397 -- The People v. David Turecki.

By the Court: The petition for rehearing is granted. (See *People v. Heslen* (1946) 27 Cal.2d 520; *People v. Edwards* (1985) 39 Cal.3d 107, 118; *People v. Kelly* (1992) 1 Cal.4th 495, 528.) Appellant, within 10 days of the date of this order, shall submit a brief either stating that he does not oppose the proposed modification of the disposition, or explaining why it is not appropriate in this case. The attorney general shall have 10 days, after appellant's brief is filed, to file a responsive brief. Stein, Acting P.J.

Division Two

A097338 -- The People v. Salvador Velasco Clavel.

By the Court: The petition for rehearing is granted. Kline, P.J.

Division Five

A096746/A097008 -- Stephen T. Davies v. Steven A. Schetctman et al.

By the Court: Order Modifying Opinion. The opinion filed on October 3, 2002 is modified as follows: (See order.) Respondent's petition for rehearing filed on October 17, 2002 is denied. Appellant's petition for rehearing filed on October 23, 2002 is denied. Jones, P.J. (Not for Publication.)

Monday, November 4, 2002

Division One

A094233 -- In re the Marriage of Anna and Jerry Litmon.

The Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on October 17, 2002, be modified as follows: (See order.) There is no change in the judgment. Appellants' petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

A097608 -- In re Lakia S., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Cheryl S.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Three

A095362 -- The People v. Cesar Arroyo.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A098584 -- Stacy Passeri v. Mike Dahlquist.

The order dated April 3, 2002, entered April 8, 2002, is modified to delete the award of sanctions and is otherwise affirmed. The parties shall bear their own costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Monday, November 4, 2002 (continued)

Division Five

A096083 -- The People v. Michael Glenn Braxton.

The judgment is reversed and the matter remanded with directions to permit appellant to renew his motion for new trial within 30 days of the remittitur. If the trial court determines that appellant has established grounds for a new trial, it shall set the case for retrial. If it determines that appellant is not entitled to a new trial, or if appellant fails to make a timely motion, it shall re-arraign appellant for judgment and pronounce judgment on the verdict. (See *People v. Minor* (1980) 104 Cal.App.3d 194, 200; *People v. VanBuskirk* (1976) 61 Cal.App.3d 395, 407.) Jones, P.J. We Concur: Simons, J., Gemello, J. (Certified for Partial Publication.)

Tuesday, November 5, 2002

Division Five

A094073 -- In re Victor F., a Person Coming Under the Juvenile Court Law. The People v. Victor F.

By the Court: The petition for rehearing is denied. Kline, P.J. (Not for Publication.)

A098553 -- In re Dwayne M., a Person Coming Under the Juvenile Court Law. The People v. Dwayne M.

The order adjudicating appellant a continued ward of the court and committing him to the care of the probation department for placement at the Glen Mills Program in Pennsylvania is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A095951 -- Sara Rain Nelson v. Fog City Diner, Inc. et al.

Order Modifying Opinion and Denying Rehearing and Publication.

The Court: It is ordered that the nonpublished opinion filed herein on October 9, 2002, be modified in the following particulars: (See order.) This modification changes the judgment. Respondents' petition for rehearing is denied. Respondents' request for publication is denied. Kline, P.J. (Not for Publication.)

Division Four

A098145 -- The People v. Jose Luis Buenrostro, Jr.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A097805 -- LaVonne M. Joyce v. Ruby Joyce.

The orders appealed from are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 5, 2002

The Court convened at 9:45 a.m. at its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Vincent Chambers, Eric Butawan, Bailiff.

A095302 Roy Duane Lee
 v.
 Kaiser Gypsum Company
Cause called. Wendy Albers argued for appellant Kaiser Gypsum Company. Bryce C. Anderson argued for respondent. Cause submitted.

A097688 Linda Starr et al.
 v.
 The Old Line Insurance Company of America
Cause called. Robert D. Phillips argued for appellant . Louis Schofield argued for respondent. Cause submitted.

A097404 Golden Eagle Insurance Company
 v.
 U.S. Continental Marketing, Inc.
Cause called. Daniel Latter argued for appellant U.S. Continental Marketing. Richard P. Edwards argued for respondent. Cause submitted.

A094144 Golden Eagle Insurance Company
 v.
 Michael Cogan
Cause called. Michael Cogan argued via telephone on his own behalf. Bridget Moorhead argued for respondent. Cause submitted.

The Court adjourned at 11:08 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 05, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Eric Butawan, Bailiff.

A094115 People

A096821 v.

Chavel Maurice Augustine

Causes called. Paul Kleven argued for appellant Augustine. George F. Hindall argued for respondent. Causes submitted.

At this point, the panel reconstituted itself from Kay, P.J., Reardon, J., and Sepulveda, J. to Kay, P.J., Reardon, J., and Rivera, J.

A097035 Rabia Khouja et al.

v.

State of California et al.

Cause called. Terence D. Edwards argued for appellants Khouja et al. Lisa Tillman argued for respondents. Cause submitted.

A096276 Roger C. Petty et al.

v.

Ronald K. Petty

Cause called. In pro per appellant Ronald Petty argued. James E. Reed argued for respondents. Cause submitted.

The Court adjourned at 2:28 p.m.

Wednesday, November 6, 2002

Division One

A097983 -- In re Brittany C., a Person Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. Christine C.

Accordingly, the appeal is dismissed as moot. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A099540 -- Patrick Caballero v. Kristi Russell.

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extensions of time, and having failed to apply for relief from default, the appeal filed on July 10, 2002 is dismissed. (See Cal. Rules of Court, rule 8(b).) Kline, P.J.

Division Five

A097846 -- Otto A. Perucci & Ruth V. Perucci v. State of California Franchise Tax Board.

The judgment is reversed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Thursday, November 7, 2002

Division Two

A093541 -- American Construction & Environmental Services, Inc. v. Mohammed H. Mosleh, et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A097704 -- Richard S. Haas v. Roy Meisner et al.

The judgment is affirmed. Respondents are awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

Division Three

A095755 -- Sherree Tyszkiewicz v. Acordia Inc., et al.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A094115, A096821 -- The People v. Chavel Maurice Augustine.

The purported appeal (No. A094115) of the denial of appellant's section 995 motion following entry of his guilty plea is dismissed. The order denying the motion to withdraw plea (No. A096821) is reversed and the cause is remanded to the trial court with directions to grant the motion. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A097035 -- Rabia Khouja et al. v. State of California.

The summary judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, November 7, 2002 (continued)

Division Five

A097532 -- The People v. Jose Jesus Ochoa.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

A095436 -- The People v. Lamar Mack.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Friday, November 8, 2002

Division One

A096657 -- Angee Adams v. City and County of San Francisco.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J.
(Not for Publication.)

A097809 -- The People v. Reginald Carter.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J.
(Not for Publication.)

Tuesday, November 12, 2002

Division Two

A093514 -- The People v. Michael Edgar.

The judgment is reversed. Kline, P. J. We concur: Haerle, J., Ruvolo, J.
(Not for Publication.)

Division Four

A098467 -- The People v. Ignacio Echevarria Hernandez.

The judgment of conviction is affirmed. Kay, P. J. We concur: Reardon,
J.
Sepulveda, J. (Not for Publication.)

Division Five

A096352 -- The People v. Augustin Hernandez.

The judgment is affirmed. Stevens, Acting P. J. We concur: Simons, J.,
Gemello, J. (Not for Publication.)

Wednesday, November 13, 2002

Division One

A093590 -- Peter G. Loewenstein et al. v. City of Lafayette.

The judgment on the takings claim is reversed. The case is remanded with directions to enter a new judgment in favor of the City. The order regarding attorney fees is affirmed. Appellant is entitled to costs. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Certified for Publication.)

Division Two

A092848 -- The People v. Frederick James Struck.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, November 13, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A097107 California Advocates for Nursing Home Reform et al.,
v.
Diana M. Bonta et al.
Cause called and argued by Monique Olivier, counsel for appellant, and James Humes, counsel for respondent. Cause ordered submitted.
- A092386 Brock, Easley Inc., et al.,
v.
Raychem Corporation.
Cause called and argued by Timothy A. Shimko, counsel for appellants, and Gregory Gilchrist and Robert Goodin, counsels for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J., and I. Santos, Deputy Clerk.

- A095558 The People,
 v.
 Charles Beau Jay.
Cause called and argued by Doug MacMaster, counsel for appellant, and Jeff Bradley, counsel for respondent. Cause ordered submitted.
- A095869 The People,
 v.
 William C. Ferrel.
Cause called and argued by Robert Vollandigham, counsel for appellant, and Catherine McBrien, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A096857 Duane Meyer,
 v.
 Pennsylvania Life Insurance Company.
Cause called and argued by Michael Guta, counsel for appellant, and Mitchel Ezer, counsel for respondent. Cause ordered submitted.
- A098747 In re the Estate of Al Russo, Deceased.
 Rosalie Russo Machado,
 v.
 Kym Jackson.
Cause called and argued by Vincent Chan, counsel for appellant, and Clinton Killian, counsel for respondent. Cause ordered submitted.
- A097021 Oracle Corporation,
 v.
 County of San Mateo.
Cause called and argued by Miruni Soosaipillai, counsel for appellant, and Tracy Salisbury, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, November 14, 2002 at 9:30 a.m.

Wednesday, November 13, 2002 (continued)

Division Four

A095302 -- Roy Duane Lee v. Kaiser Gypsum Company.

The judgment is reversed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A093760 -- The People v. Wayne Douglas Schick.

We reverse defendant's conviction for committing a lewd act on Jane Doe I (count Four). In all other respects, the judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A097969 -- The People v. Keld Sanford Walter.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A098115 -- Mary Lou Daw v. Director of the Department of Motor Vehicles.

The judgment on the alternative writ of mandate is reversed. The matter is remanded with instructions to enter judgment denying the writ petition on reinstating the DMV's suspension of Daw's license. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, November 14, 2002

Division One

A097202 -- The People v. Chad Lee.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A097544 -- Security Investment Group, L.P. v. Nicole Christine McConville, et al.

The order granting relief from default is affirmed. The request for sanctions is denied. Ms. McConville is awarded her costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A098416 -- In re Marriage of Chavez.

The appeal is dismissed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A095377 -- Leslie Citroen v. Town of Corte Madera et al.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A094551 -- Dorothy Lacey, et al. v. Fairfield Medical Group et al.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, November 14, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A096165 The People
 v.
 Steven S., a Minor
Cause called and argued by Steven Lubliner, counsel for appellant and Nanette Winaker, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A098600 Robert Blanson
 v.
 City of Richmond, et al.
Cause called and argued by Robert Blanson, appellant in propria persona and Bruce Souble, counsel for respondent. Cause ordered submitted.
- A093648 Robert Turcotte, et al.
 v.
 George Haldeman, et al.
Cause called and argued by Daniel Berko, counsel for appellants and Susan Popik, counsel for respondents. Cause ordered submitted.
- A098186 Larry Flynt
 v.
 California Gaming Commission
Cause called and argued by Michael Franchetti, counsel for appellant and Kathleen E. Gnekow, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, Acting P. J., Lambden, J.,

Ruvolo, J. and S. Graham, Deputy Clerk.

A095922 Salvatore Lucania

A097146 v.

Keith Anderson

Causes called and argued by William Clough, counsel for appellant and Mark Goldowitz, counsel for respondent. Causes ordered submitted.

COURT ADJOURNED.

Thursday, November 14, 2002 (continued)

Division Three

A100127 -- Patricia U. v. The Superior Court of San Francisco County; San Francisco Department of Human Services, R.P.I.

Patricia's petition for extraordinary relief is denied on its merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard, supra*, 3 Cal.4th at p. 894.) Because the section 366.26 hearing is set for November 20, 2002, our decision is final immediately. (Cal. Rules of Court, rule 24(d).) McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A096201 -- Jennifer S. Vaillancourt v. The Gap, Inc.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Five

A098055 -- In re Maurice A., a Person Coming Under the Juvenile Court Law. The People v. Maurice A.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Friday, November 15, 2002

Division Two

A098228 -- Michael Barnard et al. v. Bank of America.

The order denying the Bank's motion to compel arbitration is affirmed.
Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A094369 -- The People v. James Anthony Dickerson.

By the Court: The petition for rehearing is denied. Kline, P.J.

A096632 -- The People v. Jose Alfredo Godinez.

By the Court: The petition for rehearing is denied. Kline, P.J.

Division Three

A097606 -- In re Joanne E., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Kim S.

The appointment of the guardian ad litem for Kim is reversed, along with the jurisdictional and dispositional orders that followed. The matter is remanded for further proceedings consistent with this opinion. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A097051 -- Memphis Latchison v. Nina Wax.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A097501 -- William S. Goring v. Pennie Arneson.

The appeal is dismissed. Each party is to bear their own costs. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Friday, November 15, 2002 (continued)

A094611 -- Marilou Cotchett Sells v. Angelo Orphan, et al.

The appeal is dismissed. Each party to bear their own costs. In the event a subsequent appeal is taken from a properly appealable judgment, the parties may request that this court take judicial notice of the record and briefing on file herein. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, November 18, 2002

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

- A097465 Cipriano Andrada, et al.,
 v.
 Alameda County Agricultural Fair Association.
Cause called and argued by Steven R. Rhoads, counsel for appellant, and Audrey Smith, counsel for respondent. Cause ordered submitted.
- A096780 B-C Housing Partnership, et al.,
 v.
 Apollo Limited Partnership.
Cause called and argued by Jordan J. Yudien, counsel for appellants, and Daniel B. Beck, counsel for respondent. Cause ordered submitted.
- A095042 Sharon B. Siegel,
A096115 v.
 CHW West Bay, et al.
Cause called and argued by Ronald P. Kaplan, counsel for appellant, and Katherine West, counsel for respondents. Cause ordered submitted.
- A099010 Walter A. Barker, et al.,
 v.
 Sam A. Caniglia, et al.
Cause called and argued by Peter Moye, counsel for appellants, via teleconference, and John J. Cullen, counsel for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Monday, November 18, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

- A097841 Robert Busch, et al.,
v.
Charles E. Hurwitz, et al.
Cause called and argued by Stephen T. Davies, counsel for appellants, and Ann Rudolph, counsel for respondent. Russell Gans and John Alan Behnke appeared for additional respondents but did not argue. Cause ordered submitted.
- A097031 Margaret Rose Gregory,
v.
Albertson's Inc., et al.
- A097620 Margaret Rose Gregory,
v.
IRES, Inc.
Cause called and argued by Cary L. Dictor, counsel for appellant, William H. Orrick, counsel for respondent Albertson's, and David A. Stein, counsel for respondent IRES. Cause ordered submitted.

Court recessed until Tuesday, November 19, 2002 at 9:30 a.m.

Monday, November 18, 2002

Division Two

A096200 -- The People v. Jonathan K. Hagler.

We affirm. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

A093939 -- The People v. William Romero.

A093962 -- The People v. William R. Fernandez.

The judgment against Romero is modified to reflect that his sentence on count four (assault with a semiautomatic firearm on Bonifacio) is stayed pursuant to section 654. The trial court is directed to prepare a new abstract of judgment reflecting the modified sentence and to forward the new abstract to the Department of Corrections. In all other respects, the judgments are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Five

A093862 -- The People v. Tshombe Kelley.

By the Court:

1. The petition for rehearing, filed herein on November 1, 2002, is denied.
2. Pursuant to California Rules of Court, rule 976(b)(1) and (3) the court orders publication of the introductory paragraph, Background, part III of the Discussion, and the Disposition of its opinion in *People v. Kelley*, A093862. Jones, P.J.

A098847 -- In re James D., a Person Coming Under the Juvenile Court Law. The People v. James D.

The order adjudicating appellant a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him at the CYA is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, November 19, 2002

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J. Swager, J., and Margulies, J.; and F. Abad, Deputy Clerk. Justice Stein did not participate in argument of the first case.

A096606 The People,
 v.
 Jacques Romane Slocum.
Cause called and argued by James Bradley O'Connell, counsel for appellant, Morris Lenk, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Swager left the bench and Justice Stein participated in the remainder of the calendar.

A097191 In re Kara T.
 The People,
 v.
 Kara T.
Cause called and argued by Kimberly Fitzgerald, counsel for appellant, and Michele J. Swanson, counsel for respondent. Cause ordered submitted.

A096322 Insurance Commissioner of the State of California,
A096599 v.
 Golden Eagle Insurance Company,
 Western Pacific Industries, Inc.
Cause called and argued by Richard P. Edwards, counsel for appellant, and Steven M. Hanle, counsel for respondent. Cause ordered submitted.

A097105 Edward Cullen, et al.,
 v.
 Industrial Holdings Corporation.
Cause called and argued by Lloyd Leroy, counsel for appellants, and Kevin M. Fong, counsel for respondent. Cause ordered submitted.

A094731 In re Marriage of Elizabeth and Scott Nicholson.

A096862 Elizabeth Nicholson,

A097023 v.

Scott Nicholson.

Cause called and argued by Robert L. Lewis, counsel for appellant, and
Garrett C. Dailey, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, November 19, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Margulies, J.; and F. Abad, Deputy Clerk.

- A095867 The People,
 v.
 Daniel E. Price.
Cause called and argued by John Alexander Halley, counsel for appellant, and Bridget Billeter, counsel for respondent. Cause ordered submitted.
- A097580 Elayne Hermann,
 v.
 Charles Stratton, D.D.S., Inc.
Cause called and argued by Patrick Carter, counsel for appellant, and Mary P. Sullivan, counsel for respondent. Cause ordered submitted.

Court adjourned.

Tuesday, November 19, 2002

Division Two

A090177 -- The People v. Ramon Hernandez.

The judgment of conviction is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A097752 -- In re Antonio I., a Person Coming Under the Juvenile Court Law. The People v. Antonio I.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A096276 -- Carl Roger Petty v. Ronald Kenneth Petty.

The judgment is affirmed. Respondent's request for sanctions is denied. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A098860 -- The People v. Patricia Ann Wertz.

The judgment is affirmed. Kay, P. J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A098146 -- Sunset Aviation, Inc. v. DHS Aviation, Inc., et al.

The judgment, as amended, is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Tuesday, November 19, 2002 (continued)

A096260 --The People v. James Harold Askew.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

Wednesday, November 20, 2002

Division One

A096079 -- The People v. Robert J. Montoya.

We modify the judgment to (1) stay the sentence on count III (forgery), as well as the sentence on Count IV (check possession) pursuant to section 654; (2) add to trial court's conditional language "if that has not yet been paid" with regard to the direct restitution fine and the section 1202.4 restitution fine; and (3) award appellant 425 days of custody credit and 142 days of conduct credit, for a total credit for time served of 567 days. As so modified, the judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A096777 -- The People v. David Alton Morales.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A098770 -- The People v. Schalla McCants.

There was no error in the proceedings. There are no issues requiring further briefing. The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A097608 -- In re Lakia S., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Cheryl S.

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on November 4, 2002, be modified as follows: (See order.) There is no change in the judgment. The petition for rehearing is denied. Stein, Acting P.J. (Not for Publication.)

A095042, A096115 -- Sharon B. Siegel v. Chw West Bay et al.

The judgments and attorney fee order appealed from are affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Wednesday, November 20, 2002 (continued)

Division Two

A097829 -- In re Jennifer B., a Person Coming Under the Juvenile Court Law. Del Norte County Department of Health & Social Services v. Sandra B.

The appeal is dismissed as moot. The motion to consolidate appeals is denied without prejudice. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A097861 -- Kenya Komizu v. Steve Gourley, Director Department of Motor Vehicles.

The opinion in the above-entitled matter filed on October 25, 2002, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports, excluding section II. Kline, P.J.

A100796 -- CBS Broadcasting Inc. v. The Superior Court of San Francisco County. Leanne Kozak, R.P.I.

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

A097741 -- Joseph Leonard Neufeld v. Franchise Tax Board.

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 20, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Pollack, J., Corrigan J., and I. Calanoc, Deputy Clerk.

- A095275 Richard Medina,
v.
William Cooke, et al.
Cause called and argued by Michael Spalding, counsel for appellant, and Gregory Storey, counsel for respondent. Cause ordered submitted. Pollack, J. left the bench after this case.
- A095813 Robert Lane,
v.
National Airmotive Corporation.
Panel is now comprised of McGuiness, P.J., Corrigan, J. and Parrilli, J.
Cause called and argued by Daniel Bacon, counsel for appellant, and Richard Duffy, counsel for respondent. Cause ordered submitted.
- A091299 Majorie Gauss, et al.
v.
GAF Corporation.
- A091308 Carter Haught,
v.
GAF Corporation
- A092647 In re Complex Asbestos Litigation.
Cause called and argued by Steven Raspe, counsel for appellants and William Sheehan, counsel for respondents. Cause ordered submitted.

- A093974 American Home Assurance
Company et al.,
v.
Societe Commerciale
Toutelectric.
Cause called and argued by Curtis Cole, counsel for appellant, and David Reynolds, counsel for respondents. Cause ordered submitted. McGuiness, P.J. left the bench after this case.
- A092239 Floyd Koch et al.,
v.
Citadel Financial Corp. et al.
- A092473 Floyd Koch et al.,
v.
Edward Hankins et al.
Panel is now comprised of Corrigan, J., Parrilli, J. and Pollack, J. Cause called and argued by Andrew Wilson, counsel for appellants and Gary Garfinkle, counsel for respondents. Cause ordered submitted.
- A097256 Pamela R. Dewitt,
v.
Timothy A. Dewitt.
Cause called and argued by appellant Timothy Dewitt, and Richard Alexander, counsel for respondent. Cause ordered submitted.
- A097471 Syufy Enterprises, LP,
v.
City of Oakland et al.
Cause called and argued by Basil Shiber, counsel for appellant, and Andrew August, counsel for respondents. Cause ordered submitted.

COURT RECESSED

STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 20, 2002

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Corrigan J., Parrilli J., and C. Turner, Deputy Clerk.

A094096 Bart Valerio,
v.
Andrew Youngquist Construction,
Cause called and argued by Francis Thomas Donohue, counsel for appellant,
and Louis James Willett, counsel for respondent. Cause ordered submitted.

A096226 Ismael De Leon,
v.
Olympiad Corporation, et al.,
Cause called and argued by Harold J. Truett, counsel for appellant, and
Vernon L. Bradley, counsel for respondent. Cause ordered submitted.

A094878 Douglas R. Schmidt,
v.
Raymond M. Etter, et al.,
Attorney Stephen J. Rosenberg appearing for respondent and Thomas J.
Becker not present for argument. Oral argument deemed waived subject to
the court's determination whether or not there was a legitimate reason for the
non-appearance of counsel for appellant. If the court determines there was a
legitimate reason or we made an error then the court would give counsel the
opportunity to re-schedule if they chose to do so.

A097309 In re the Estate of Gerrit J. Damveld:
Gary L. Wilburn,
v.
S&P Company, et al.,
Cause called and argued by Donald C. Carroll, counsel for appellant, and
Stephanie A. Sheridan, counsel for respondent. Cause ordered submitted.

Justice Parrilli left the bench and Justice Pollak took his place on the bench.

A097772 In re Jeffrey B.,

The People,

v.

Jeffery B.,

Cause called and argued by Frank Scott Moore, counsel for appellant, and Michele Swanson, counsel for respondent. Cause ordered submitted.

A091841 Charles Gush II, et al.,

v.

Dual Arch International, Inc., et al.,

Cause called and argued by David W. Lively, counsel for appellant, and Michael Lee Abbott, counsel for respondent. Cause ordered submitted.

A096346 Gordon J. Clegg,

v.

Deborah Ann Robinson,

Cause called and argued by Gordon Clegg, appellant in pro-per, and Deborah Robinson, respondent in pro-per. Cause ordered submitted.

Wednesday, November 20, 2002 (continued)

Division Four

A097251 -- The People v. Edward Anthony Gonzales.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A097157 -- The People v. Sharon E. Grigsby.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A095341 -- The People v. Kevin Klee.

The judgment is affirmed, and the appeal is dismissed insofar as it challenges the award of custody credits. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A098143 -- Michael Venuta v. Glen Loban.

The order vacating the default judgment is reversed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A097404 -- Harry W. Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; U.S. Continental Marketing, Inc.

The judgment of the superior court is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, November 21, 2002

Division One

A096780 -- B-C Housing Partnership, L.P. et al. v. Apollo Limited Partnership et al.

A096583 -- B-C Housing Partnership, L.P. et al. v. The Superior Court of Alameda County; Apollo Limited Partnership et al., R.P.I.

The order disqualifying appellants' attorneys is affirmed. The appeal is dismissed insofar as it concerns portions of the order disqualifying appellants' experts. The order to show cause, having served its purpose, is discharged, and the petition for writ of mandate is denied. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A097105 -- Edward Cullen et al. v. Industrial Holdings Corporation.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A096599 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Corporation, West Pacific Industries.

A096322 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Corporation, West Pacific Industries.

The order of the trial court is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A095532 -- The People v. John Milwitt.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Thursday, November 21, 2002 (continued)

A097191 -- In re Kara T., a Person Coming Under the Juvenile Court Law.

The judgment is reversed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A098326 -- Monique Romagosa v. The Gap, Inc.

We affirm the judgment. The Gap is awarded costs. Lambden, J. We concur: Haerle, Acting P. J., Ruvolo, J.

A098007 -- The People v. Perry Lee Tatmon

The judgment is affirmed but the matter is remanded for correction of the abstract of judgment consistent with the views expressed herein. Lambden, J. We concur: Kline, P. J., Haerle, J. (Not for Publication.) .

A095770 -- Vincent J. Tavani v. Levi Strauss & Co.

The judgment is affirmed. Levi is awarded costs. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Three

A097325 -- Kandi Kaufman v. Joe Monte.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A095422 -- O.S. Williams, Jr. v. William B. Miller, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Thursday, November 21, 2002 (continued)

Division Four

A098830 -- In re Lincoln F., a Person Coming Under the Juvenile Court Law. The People v. Lincoln F.

The purported appeal is dismissed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A096754 -- The People v. Cornelius L. Green.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A098419 -- In re Nancy S., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Rain S.

The order appealed from is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, November 21, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A09931 Howard S. Wright Construction Co.

8

v.

The Superior Court Of Alameda County

BBIC Investors LLC

Cause called and argued by James McQueen, counsel for petitioner, and by Glenn P. Zwang, counsel for real party in interest. Cause ordered submitted.

A09718 Eugene Evans et al.

7

v.

City of Berkeley et al.

Cause called and argued by Jonathan D. Gordon, counsel for appellant, and by Laura M. McKinney, counsel for respondent. Cause ordered submitted.

A09748 Victor Amatucci

9

v.

County of San Mateo

Cause called and argued by George P. Eshoo, counsel for appellant, and by Miruni Soosaipillai, counsel for respondent. Cause ordered submitted.

A09647 The People

2

v.

Jennie Rose Dilello

Cause called and argued by Eric Liberman, counsel for appellant, arguing via teleconference, and by Seth K. Schalit, counsel for respondent. Cause ordered submitted.

A09887 Intershop Communications AG, et al.

8 v.

The Superior Court of San Francisco County

Frank R. Martinez

Cause called and argued by Karen Wentzel and Dennis M. Sullivan, counsel for petitioner, and by Robert D. Bjork, counsel for real party in interest.

Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Simons took her place.

A09794 Myron Jackson et al.

0 v.

Steven Gourley, as Director of DMV

Cause called and argued by Robert A. Harkness, counsel for appellant, and by Ronald M. Cordova, counsel for respondent. Additional briefing ordered, submission deferred.

Court adjourned at 11:47 a.m.

Friday, November 22, 2002

Division One

A097465 -- Cipriano Andrada et al. v. Alameda County Fair Association.

For the stated reasons, the summary judgment is affirmed. Marchiano, P.J.
We Concur: Swager, J., Margulies, J. (Not for Publication.)

A097983 -- In re Brittany C., a Person Coming Under the Juvenile Court Law. Social Services Agency v. Christine C.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A098854 -- The People v. Russell Lee Wyant.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J.,
Stein, J. (Not for Publication.)

Division Two

A097994 -- The People v. Thomas Edward Lemmons.

The order imposing appellant's previously stayed state prison commitment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A097181 -- The People v. Nhigel Anderson.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J.,
Corrigan, J. (Not for Publication.)

A097772 -- In re Jeffery B., a Person Coming Under the Juvenile Court Law. The People v. Jeffery B.

The jurisdictional findings and disposition order are affirmed. Pollak, J.
We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Friday, November 22, 2002 (continued)

A097309 -- In re the Estate of Gerrit J. Damveld, Deceased. Gary L. Wilburn v. S&P Company et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A096226 -- Ismael DeLeon v. Olympiad Corporation.

The judgment is reversed. DeLeon shall recover his costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A091841 -- Charles Gush II et al. v. Dual Arch International, Inc., et al.

The judgment is reversed and the matter is remanded to the trial court for further proceedings in accordance with section 632 and for the entry of a new judgment. Charles Gush II, Alan Hosking and Theresa Hosking to recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A097707 -- Laverne N. Jones v. Wells Fargo Bank, N.A., et al.

The appeal is dismissed. Respondents shall recover their costs on appeal. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A095813 -- Robert Lane v. National Airmotive Corporation.

The award of costs to NAC is affirmed. Lane shall bear costs of this appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A099057 -- The People v. Eric A. Martin.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A095145 -- The People v. Daryl Gene Ramey.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Friday, November 22, 2002 (continued)

A096350 -- The People v. Jose Luis Corro Rojas.

Judgment affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A096690 -- The People v. Cuco Gallegos Valdivias.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

A098134 -- The People v. Sergio Chavez.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A094144 -- In re Golden Eagle Insurance Company in Liquidation.

The judgment is reversed. The superior court is directed to conduct further proceedings in accordance with the views expressed in this opinion. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A099595 -- In re Terrance J., a Person Coming Under the Juvenile Court Law. The People v. Terrance J.

The orders that the minor be continued as a ward of the court and be committed to Glenwood Camp are affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A099262 -- The People v. Larry A. Leister.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Friday, November 22, 2002 (continued)

A098752 -- In re Coty M., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Nadine M.

The dispositional order is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A097770 -- In re Dwayne T., a Person Coming Under the Juvenile Court Law. The People v. Dwayne T.

The probation condition requiring Dwayne to obtain permission before traveling outside of Alameda County is stricken. The probation condition barring Dwayne from the area of 61st Avenue is modified to read: "The minor is ordered to stay away from the 800 block of 61st Street." The order of the juvenile court (including all other probation conditions) is otherwise affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, November 21, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A09208 Fagan Equipment, Inc.

5

v.

US Rentals, Inc.

Cause called and argued by Thomas H. Watson, counsel for appellant, and by Robin G. Workman, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Gemello left the bench and Justice Stevens took her place.

A09701 The People

5

v.

Fred Charles Evans

Cause called and argued by Arthur K. Wachtel , counsel for appellant, and by David M. Baskind, counsel for respondent. Cause ordered submitted.

A09785 Citibank Federal Saving Bank

6

v.

Alexander Shen

Cause called and argued by Gary Nemek, counsel for appellant, and by George W. Wailes, counsel for respondent. Cause ordered submitted.

A09727 In re Jon G., a Person Coming Under the Juvenile Court Law.

4

The People

v.

Jon G.

Cause called and argued by Gordon B. Scott, counsel for appellant, and by Jeffery M. Bryant, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Gemello took her place.

A09837 Terence West

0

v.

OXO Chemie, Inc.

Cause called and argued by Shelley S. Buchanan, counsel for appellant, and by Myron D. Moye, counsel for respondent. Cause ordered submitted.

A09738 Real Estate Commissioner of the State of California

3

v.

Bagnol Group Applicants

Cause called and argued by Gerald R. Barrick, counsel for appellant, and by Timothy Lundell and Julian O. Standen, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:52 a.m.

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Friday, November 22, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A09931 Howard S. Wright Construction Co.

8

v.

The Superior Court Of Alameda County

BBIC Investors LLC

Cause called and argued by James McQueen, counsel for petitioner, and by Glenn P. Zwang, counsel for real party in interest. Cause ordered submitted.

A09718 Eugene Evans et al.

7

v.

City of Berkeley et al.

Cause called and argued by Jonathan D. Gordon, counsel for appellant, and by Laura M. McKinney, counsel for respondent. Cause ordered submitted.

A09748 Victor Amatucci

9

v.

County of San Mateo

Cause called and argued by George P. Eshoo, counsel for appellant, and by Miruni Soosaipillai, counsel for respondent. Cause ordered submitted.

A09647 The People

2

v.

Jennie Rose Dilello

Cause called and argued by Eric Liberman, counsel for appellant, arguing via teleconference, and by Seth K. Schalit, counsel for respondent. Cause ordered submitted.

A09887 Intershop Communications AG, et al.

8

v.

The Superior Court of San Francisco County

Frank R. Martinez

Cause called and argued by Karen Wentzel and Dennis M. Sullivan, counsel for petitioner, and by Robert D. Bjork, counsel for real party in interest.

Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Simons took her place.

A09794 Myron Jackson et al.

0

v.

Steven Gourley, as Director of DMV

Cause called and argued by Robert A. Harkness, counsel for appellant, and by Ronald M. Cordova, counsel for respondent. Additional briefing ordered, submission deferred.

Court adjourned at 11:47 a.m.

Monday, November 25, 2002

Division One

A089581 -- The People v. Matthew Bongard.

A089582 -- The People v. David Neitz.

A089726 -- The People v. Ronald Rath.

A090502 -- The People v. Marty Schwind.

The judgments against all four appellants are reversed and the case is remanded to the trial court for proceedings not inconsistent with the views expressed herein. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A097961 -- George E. Mohun et al. v. Harold R. Ebright, Jr., et al.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A096606 -- The People v. Jacques Slocum.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A095649 -- The People v. Jeffrey Richard Favro.

The judgment is affirmed. Ruvolo, J. I concur: Haerle, J. (See concurring opinion by Kline, P.J.) (Not for Publication.)

A096852 -- The People v. John Wesley Fritch.

By the Court: The petition for rehearing is denied. Kline, P.J.

A095703 -- Mary C. Keitel v. George W. Heubel, et al.

By the Court: The petition for rehearing is denied. Kline, P.J.

Monday, November 25, 2002 (continued)

Division Three

A097334 -- The People v. George Jose Davis.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A100517 -- Faataui Faataui v. The Superior Court of San Francisco County; The People, R.P.I.

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order denying the motion to suppress filed by petitioner Faataui Faataui and to enter a new and different order granting the motion to suppress evidence of the contraband seized from his right front pants pocket. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A091299 -- Marjorie Gauss, et al. v. GAF Corporation.

A091308 -- Carter Haught v. GAF Corporation.

A092647 -- In re Complex Asbestos Litigation.

Judgments entered against appellant GAF in the *Gauss*, *Haught* and *In re Complex Asbestos Litigation* cases are reversed, and these matters are remanded to the trial court for further proceedings in accordance with this opinion. The cross-appeals in *Gauss* and *In re complex Asbestos Litigation* are dismissed. Each side shall bear its own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Partial Publication.)

Division Four

A096443 -- Effie Lawrence v. Ace Recovery Services, Inc.

Appeal dismissed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Monday, November 25, 2002 (continued)

A094519 -- William Yu et al. v. Signet Bank/Virginia et al.

A095102 -- William Yu et al. v. Signet Bank/Virginia et al.

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed October 30, 2002, be modified as follows: (See order.) These modifications do not change the judgment. The petitions for rehearing are denied. Kay, P.J. (Certified for Publication.)

Division Five

A096472 -- The People v. Jennie Rose Dilello.

The order of trial court revoking appellant's probation is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A097187 -- Eugene Evans et al. v. City of Berkeley et al.

The judgment of dismissal is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A097700 -- Estate of Saleem H. Totah, Deceased.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Tuesday, November 26, 2002

Division One

A098010 -- Syed Badshah Bhukhari v. Ho In Kim.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A097673 -- The People v. Milton Eaton.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A094397 -- The People v. David Turecki.

The conviction for second degree murder is reversed, with the following directions: If the People do not elect to retry the defendant within the time specified in Penal Code section 1382, subdivision (2), the trial court shall proceed as if the remittitur constitutes a modification of the judgment to reflect a conviction for voluntary manslaughter, and shall resentence defendant accordingly. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A099504 -- American International Speciality Lines Insurance Company v. The Superior Court of San Francisco County; Coca-Cola Enterprises Inc. et al., R.P.I.

By the Court: The petition for writ of mandate is denied. Petitioner's request for judicial notice is denied. Kline, P.J.

A093857 -- California School Employees Association et al. v. Fremont-Newark Community College District.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, November 26, 2002 (continued)

A100499 -- Coca-Cola Enterprises Inc. et al. v. The Superior Court of San Francisco County; American International Specialty Lines Insurance Company, R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

A099480 -- Coca-Cola Enterprises Inc. et al. v. The Superior Court of San Francisco County; American International Specialty Lines Insurance Company, R.P.I.

By the Court: the petition for writ of mandate is denied. Kline, P.J.

A100832 -- William Cooke et al. v. The Superior Court of San Mateo County; Richard Medina, R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

A095558 -- The People v. Charles Beau Jay.

The appeal is dismissed as moot. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A095703 -- Mary C. Keitel v. George W. Heubel, et al.

By the Court: The petition for rehearing is denied. Kline, P.J.

A093648 -- Robert Turcotte v. George Haldeman, et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A098669 -- The People v. John Yang.

The appeal is dismissed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Tuesday, November 26, 2002 (continued)

Division Three

A089003 -- The People v. Daniel Justice Briscoe.

The decision in *People v. Briscoe*, A089003, filed February 16, 2001, is vacated. The trial court's judgment is reversed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A097256 -- Pamela R. Dewitt v. Timothy A. Dewitt.

The order is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A097429 -- The People v. Byron Oliver George.

Judgment affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A094337 -- The People v. Rocky Hunt.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A098437 -- The People v. James David Weathers.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 26, 2002

The Court convened at 9:30 a.m. at its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kay, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Eric Butawan, Bailiff.

A093378 People
 v.
 Joseph Calitina
Cause called. Gary Crooks teleargued for appellant Calitina. Amy Haddix argued for respondent. Cause submitted.

A097919 Citizens for Responsible & Accountable Government
 v.
 Mendocino County Board of Supervisors
Cause called. Rodney Jones argued for appellant Citizens. Frank Zotter argued for respondent. Cause submitted.

At this point, the court reconstituted itself from Kay, P.J., Reardon, J. and Sepulveda, J. to Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A097806 People
 v.
 Shannon Secrease
Cause called. Jonathan Soglin argued for appellant Secrease. Dorian Jung argued for respondent. Cause submitted.

A095684 People
 v.
 Ronald Ellis
Cause called. Michael Murray argued for appellant Ellis. Margo Yu argued for respondent. Cause submitted.

A097386 Ischemia Research & Educational Foundation
 v.
 Arthur Andersen
Cause called. Joseph M. Alioto argued the opening for appellant Ischemia.

Christopher R. Ball argued for respondent. Myron Moskowitz argued the closing for appellant. Cause submitted.

The Court adjourned at 11:58 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 26, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Eric Butawan, Bailiff.

A095952

People

v.

Tommy Lee Bibbs

Causes called. Jill Fordyce argued for appellant Bibbs. Violet Lee argued for respondent. Cause submitted.

The Court adjourned at 1:48 p.m.

Tuesday, November 26, 2002 (continued)

Division Five

A097015 -- The People v. Fred Charles Evans.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, November 26, 2002 (continued)

A097835 -- In re Ashley Marie G., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Chandra C.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

A097095 -- Rogelio Garcia et al. v. Farmers Group, Inc., et al.

By the Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on October 30, 2002, be modified as follows. (See order.) This modification does not effect a change in the judgment. The petition for rehearing is denied. Jones, P.J. (Not for Publication.)

A097982 -- In re David Wade V., a Person Coming Under the Juvenile Court Law. The People v. David Wade V.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

Wednesday, November 27, 2002

Division One

A097580 -- Elayne Hermann v. Charles Stratton, D.D.S., Inc. et al.

The order granting interim costs and attorney fees to the corporation is reversed. Except insofar as it grants to Dr. Stratton impermissible costs for postage, telephone, and copying, the order of the trial court as to him is affirmed and the case is remanded for calculation and deduction of the costs that are precluded by statute. (Code Civ. Proc., § 1033.5, subd. (b)(3).) Appellant is entitled to costs on appeal. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A097859 -- Conservatorship of the Person of Swain K.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A095867 -- The People v. Daniel E. Price.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A094099/A096376 -- Project Inform v. Todd Swindell, et al.

The judgment and order granting the injunction, and the order denying attorneys fees, are affirmed. Each party shall bear its own costs. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A095039 -- San Francisco Aids Foundation v. Betty Best et al.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A098550 -- In re Rashad W., a Person Coming Under the Juvenile Court Law. The People v. Rashad W.

We affirm the orders of the juvenile court. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Wednesday, November 27, 2002 (continued)

Division Three

A096346 -- Gordon J. Clegg v. Deborah Ann Robinson.

The July 17, 2001, judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A097942 -- The People v. Larry Pewee Commander.

The conviction is affirmed. The judgment is remanded for correction of the abstract of judgment consistent with the views expressed herein. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A098289 -- David Grayson Dickey, D.D.S. v. Board of Dental Examiners.

The order the petition for writ of administrative mandamus is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A098037 -- The Greenlining Institute et al. v. The Public Utilities Commission of the State of California; Pacific Bell Telephone Company, R.P.I.

The petition for writ of review is denied. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

A100407 -- Kimberly J. v. The Superior Court; Social Services Agency et al., R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal.Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for January 29, 2003, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A092239 -- Floyd Koch et al. v. Citadel Financial Corp. et al.

A092473 -- Floyd Koch et al. v. Edward Hankins et al.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Wednesday, November 27, 2002 (continued)

A098291 -- Jamila Rigor Mangondato, D.D.S. v. Board of Dental Examiners.

The order the petition for writ of administrative mandamus is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A095275 -- Richard Medina, et al. v. William Cooke, et al.

The orders of May 17 and September 5, 2001, correcting and amending the judgment for Explorer Insurance Company nunc pro tunc, are vacated. The judgment entered upon the jury's verdict on March 12, 2001, is ordered modified, corrected and amended to award damages in favor of Explorer Insurance Company and against William and Debbie Cooke in the amount of \$25,000.

In all other respects, the judgment and the orders appealed from are affirmed. Each side shall bear its own costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

A098917 -- The People v. Calvin L. Phillips.

In sum, We find no arguable issues for review pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A098672 -- In re Andre R., et al., Persons Coming Under the Juvenile Court Law. Social Services Agency v. Ron R.

The amended dispositional orders filed April 24, 2002, are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A097539 -- The People v. Maxine Smith.

The order of December 24, 2001, denying Smith release on an outpatient basis, is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

Wednesday, November 27, 2002 (continued)

A094096 -- Bart Valerio v. Andrew Youngquist Construction.

The matter is reversed and remanded for a new trial. Birtcher asks that we remand the matter with instructions to the trial court to find that the parties entered into a written trade contract. We decline to do so. “After an ordinary general reversal, the cause is at large for retrial. [Citation.] The court has the same authority to allow amendments as in a case not yet tried, and leave to amend is granted with about the same liberality. [Citations.]” (5 Witkin, Cal. Procedure, *supra*, Pleading, § 1140, p. 595.) Each side is to bear its own costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Certified for Publication.)

Division Four

A095684 -- The People v. Ronald Charles Ellis.

The judgment, including the sentence, is affirmed. Reardon, J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A095412 -- The People v. Harold Wayne Taylor.

The judgment is affirmed as to the murder of Ms. Fansler but reversed as to the fetal murder count. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Certified for Partial Publication.)

A094584 -- People of the State of California v. Nicholas Yost.

The order of commitment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A095805 -- The People v. Terray David Castellino.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Wednesday, November 27, 2002 (continued)

A096067 -- The People v. Lloyd Johnson.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J.
(Not for Publication.)

A097274 -- In re Jon G., a Person Coming Under the Juvenile Court Law. The People v. Jon G.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

A095751 -- The People v. Erik Ernst Lovaas.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)